

The Evolution of Tenant Representation

Saturday, March 5, 2011 | San Diego Metro Magazine | David Marino

For over a century, commercial real estate brokers have had their familiar “For Lease” signs on buildings, marketing vacant space for building owners. Even deeper in their service offering to landlords, these firms manage the buildings, help with financing, co-invest in the real estate (and often own the real estate themselves) and advise property owners in the purchasing and selling of real estate. Commercial real estate brokerage firms like Jones Lang LaSalle, Cushman & Wakefield, CBRE and Cassidy Turley are the outsourced sales and marketing departments for landlords. The landlord is king, and a brokerage firm’s business is that of the palace guard.

The objectives of the tenant in a commercial lease transaction are diametrically opposed to those of the landlord. While the landlord will want the longest lease, at the highest rent with the least concessions, in virtually every transaction the tenant wants exactly the opposite. In a soft market like we have today, the opportunities in a lease are whatever you can negotiate, and creativity rules the day. There are few rules, and there is no such thing as a “market” rent. Tenants falsely think it’s the market that sets the terms between the landlord and tenant, but the commercial real estate market is inherently inefficient — every property is unique and each landlord’s circumstance is different.

It isn’t like the stock market, with millions of buyers and sellers trading with open information and resetting the market price with every buy or sell order. Furthermore, the information about actual lease transactions is typically held privately between the parties to the lease transaction. There is no public database of lease comps, nor will there ever be. If a tenant does ask to see comps, a landlord’s broker representing a tenant in the same transaction often uses a subset of the most expensive market comps to justify the high lease costs to the tenant.

Instinctually, a business owner understands that those companies with the “For Lease” signs up in front of buildings are representing the building owner. But when you are a business owner that needs space, or the management team member that has been tasked with the real estate function in the company, does it make sense to call the listing broker for help with your expansion? Or do you get in the car and start calling dozens of landlords’ listing brokers trying to find out what’s available, what the market is, and play them off against each other? When I got into this business in the 1980s, that’s what busy executives often wasted their time doing, and the end result was often a lease at 10 percent to 20 percent above market.

Another problem with the traditional landlord brokerage firms is when it comes to deciding what buildings to show to a client. Of course, the tenant wants to know that they have seen all of the good options. But when a tenant is working with a landlord’s broker, that broker’s fiduciary agency interest is first going to be to that landlord. The landlord is seen as the long-term customer, and not the tenant. Thus, what options should the tenant expect to see? Unfortunately, the tenant is often presented the listings of that broker first, and then of that broker’s company second. Next in order, other listings may be presented from other brokerage firms if those don’t work. Lastly, subleases might be presented if the landlords’ listings don’t work, but only as a last resort, as subleases don’t help the mission of the brokerage firms advocating for landlords with vacant space. In fact, when there is a sublease in a building, the landlord’s listing broker is generally forbidden by that landlord to take the listing on that sublease, as the landlord wants their broker pushing the landlord’s space first.

When I started representing tenants exclusively over two decades ago, all of the landlord brokers told me it was just a fad, and that the soft market in the early 1990s was the only reason a tenant representative could be effective. Brokers forecasted that tenant representation would go away once it became a landlord’s market again. But as vacancy rates went down, making building choices fewer and rents more expensive, the role of a tenant’s advocate only becomes more valuable. Creating leverage and developing quality options for tenants became more

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critical than ever. But like any paradigm shift, it took several years to educate the market about this new way of doing business. Tenant representation has become the gold standard by which sophisticated corporate executives, partners in law firms and other private business owners seek out independent representation for their corporate real estate transactions.

When logic is applied, tenants want independence in their legal counsel, accounting treatment, financial advisory and insurance services ... and now also their commercial real estate services. Business owners want to sleep at night knowing that their interests have not been compromised, that they have seen all of the options, and that they have the bottom line on a transaction to lease or purchase a property. Free from the shackles and chains of landlord listings, the tenant representation service provider is able to deliver that comfort.

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